IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6679 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMMED AIYUB MOHMMED HABIB HAVAWALA

Versus

DY.COLLECTOR (MIDDAY MEALS SCHEME)

Appearance:

1. Special Civil Application No. 6679 of 2002

MR GIRISH D BHATT for Petitioner No. 1-3

Mr.L.R.Poojari, learned AGP for Respondent No. 1-4

UNSERVED-REFUSED (N) for Respondent No. 5

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 04/04/2003

ORAL JUDGEMENT

1. Rule. Mr. L.R.Poojari, learned AGP waives service of rule on behalf of respondents Nos.1 to 4. Notice to respondent No.5 is served as he has refused to accept the notice and the same is reflected in the affidavit of service filed on behalf of petitioner. By consent rule is fixed forthwith.

2. This petition deserves to be allowed only on short point as the respondent - authority had not given opportunity to the petitioner nor even furnished the objections raised by the residents of Brahmpuri-ni-Pole dated 27.12.2001 as well as the report submitted by the Police Sub Inspector, Kalupur Police Station dated 24.2.2002. The permission which was granted earlier on 19.11.2001 was cancelled by the Deputy Collector (Midday Meals Scheme), Ahmedabad vide order dated 20.4.2002. During hearing Mr. Bhatt, the learned counsel appearing for the petitioner, has taken me through the petition and the documents attached thereto, including the order under challenge passed by the Deputy Collector (Midday Meals Scheme), Ahmedabad dated 20.4.2002 as well as the affidavit in reply filed in detail by Shri Jadeja, Deputy Collector (Midday Meals Scheme), Ahmedabad respondent No.1 in the petition dated 28.8.2002 and certain provisions of Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (hereinafter referred to as 'the Act' for short) and the unreported decision of this court dated 17.6.2002 in the matter of Bankimbhai Jayantilal Shah v. State of Gujarat in Special Civil Application No.313 of 2002 and the decision in the matter of Padmaben Rasiklal Mehta v. State of Gujarat, reported in 1997 AIHC 597.

3. Mr.Poojari, learned AGP, has while supporting the order under challenge, taken me through the reply affidavit filed by Shri Jadeja, Deputy Collector (Midday Meals) Ahmedabad dated 28.8.2002. According to Mr. Poojari, the property in question is situated in the city of Ahmedabad at Kalupur area in the Pole of Brahampuri near Raja Mehta-ni-Pole, Nava Darwaja Road, Kalupur. The owner of the said property Smt. Lilaben had sold the property through Registered Sale Deed to Bharatbhai Indubhai Bhatt on 18.7.2001 and Power of Attorney was executed by Shri Bharatbhai in favour of Bhagvati Chunilal Shah for transfer of property in favour of Mohmmed Aiyub Mohmmed Habib Havawala, Mohmmed Ishak Mohmmed Habib and Abdul Kadir Mohmmed Habib and on

seeking necessary permission for such transfer under the Act, permission was granted under order dated 19.11.2001 and on account of such transfer of the property, the residents in the locality had found that there are chances of communal tension taking place and, therefore, feelings of fear has spread in the mind of everybody and an application was made for opposing transfer on 16.1.2002 and the opinion of the police was called for and the Police Inspector, Kalupur Police Station has as per opinion dated 24.2.2002 opined that the property in question is situated where the Hindus are residing and the feelings of such residents are likely to get hurt and there would be adverse effect of law and order situation and the permission granted earlier has been cancelled and such permission granted earlier was declared as null and void as per order dated 20.4.2002. In the said affidavit in reply, the contentions raised by the petitioner were denied and prayed for dismissal of the petition.

4. A rejoinder affidavit is filed by the petitioner in detail relying upon various decisions of this court and the petitioner has reiterated all the averments made in the petition and prayed for setting aside the order.

5. In light of the affidavit filed and the contentions raised before me by Mr. Bhatt and Mr. Poojari, learned A.G.P., this petition is required to be allowed only on short ground that though the permission was granted for such transfer by the competent authority, such permission granted was cancelled without giving any opportunity to the petitioner while considering the representation in the form of objection raised by the residents of that locality and as found, on such objection raised by the residents of the locality, the authority has called for the opinion from the police and relying upon the police opinion, the earlier order granting permission was set aside by holding that the said order of granting permission is null and void. Admittedly, the petitioner was not given any opportunity by furnishing the objections raised by the residents of the locality after grating permission to sell the property and further that the opinion called for by the authority from the police was also not furnished to the petitioner. Nor even the petitioner was informed about the representation made by the residents, for which the authority was required to call for the police opinion.

6. In light of the above facts, without expressing anything on the contentions raised before me in respect of the order under challenge and the affidavit filed in

the proceedings, I am of the view that the petitioner has made out a case for setting aside the order under challenge only on the above short ground. Accordingly petition is allowed. The order passed by the Deputy Collector, (Midday Meals Scheme), Ahmedabad dated 20.4.2002 is hereby quashed and set aside. As the petition is allowed only on this ground, it will be open for the authority to decide the matter afresh after giving opportunity to the petitioner and other parties. Petition is allowed in the above terms. Rule is accordingly made absolute. Respondents Nos.1 to 4 to pay cost to the petitioner.

(D.K.Trivedi,J)

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